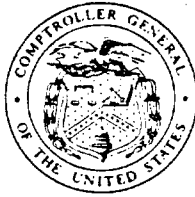


DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

61491
98032

FILE: B-186836

DATE: September 16, 1976

MATTER OF: Jordan Contracting Company
Griffin Construction Company, Inc.

DIGEST:

1. Where handwritten prices listed in bid schedule are clearly legible and modification thereto is not fairly susceptible to multiple interpretations, rule that ambiguous bid may not be accepted by Government nor explained after bid opening is inapplicable.
2. Failure to initial changes in bid price is minor informality that may be waived where there is no doubt of intended bid price and no need to question whether person signing bid effected changes.
3. Oral description of part of IFB specification provided by procurement office to low bidder only is not prejudicial to other bidders where effect is to lead low bidder to increase bid price.
4. Question of agent's authority is essentially factual determination to be made upon consideration of all relevant evidence, including evidence of authority prepared after bid opening.
5. Information requested in Standard Form 19-B, Representations and Certifications, applies to responsibility of bidder and not to bid responsiveness. Therefore, failure of bidder to submit Standard Form 19-B continuation sheets with bid may be waived as minor informality.

On April 16, 1976, the Department of the Air Force (Air Force) issued invitation for bids (IFB) F086377609040 for the repair and improvement of housing at Tyndall Air Force Base, Florida. The Air Force proposes to award a contract to the Garner Company (Garner), the apparent low bidder. Jordan Contracting Company (Jordan) and Griffin Construction Company, Inc. (Griffin) both protest the proposed award and each claims to be the lowest responsive bidder. No award has been made pending our decision on the protests.

Garner's unit and total prices for each item on the bid schedule are handwritten. Many of its price entries are inked over penciled figures; some have been crossed out and other figures inserted above the crossed out originals. None of the changes were initialed by Garner as required by the instruction to bidders. Garner included with its bid a single, handwritten sheet of plain paper, inscribed as follows:

"Please increase Items
1-11
By the amount of
\$[obliterated] Each. Unit Price
one hundred dollars each
[/s/] N. David Garner"

The protesters assert that Garner's entries on the bid form are unreadable and unclear and that the quoted price modification is ambiguous. They contend the Garner bid must therefore be rejected because an ambiguous bid may neither be accepted nor explained after bid opening. To allow the latter would, in effect, give the bidder an election whether to have its bid considered. See 40 Comp. Gen. 393 (1961); Rix Industries, B-184603, March 31, 1976, 76-1 CPD 210.

Our examination of the original of the Garner bid documents reveals no lack of clarity at all as to the item unit prices or item total prices for any item in the schedule. The bid is plainly legible. We have no difficulty in reading the handwritten prices. In fact, Air Force had no difficulty reading the prices at bid opening. While the bid could be neater, it could not be clearer. Furthermore, although the bid form calls for initialing changes in the bid, the requirement has consistently been regarded as a matter of form not affecting the bid's consideration for award so long as there is no question as to the bid intended. See 49 Comp. Gen. 541 (1970). We think the general rule applies here.

Shortly before submitting its bid, a Garner representative reportedly asked the contracting officer whether sidewalks were to be included in the bid price. When the contracting officer indicated the work would be required, the representative added the handwritten modification quoted above. No other bidder was provided this information at that time. However, we do not view the disclosure by the contracting officer as prejudicial to the other bidders or as giving Garner an unfair competitive advantage. The disclosure purports to be merely a description of part of the IFB specifications. In any case, the result of the disclosure was that Garner increased its bid price.

Furthermore, Garner's modification is not ambiguous. The modification simply indicates that the unit prices of items 1 through 11 are each to be increased by \$100. No post-bid opening explanation or interpretation is required. Jordan has advanced various alternate meanings for the modification, attempting to show that multiple interpretations are possible. However, those constructions rely on minor differences between the Air Force's and Garner's descriptions of the modification made in the context of responding to this bid protest and do not depend on the language of the modification. Our reading of the modification leads to the same single meaning reached by the Air Force.

Jordan also contends that Garner's bid must be rejected because it was signed by a person without authority to bind that firm. The Garner Company is a sole proprietorship owned by M. W. Garner. The bid, however, was signed by "N. David Garner, Manager," and offers no specific indication of the authority of the signer to submit a binding offer on behalf of Garner. Jordan maintains that the affidavit signed by M. W. Garner attesting to N. David Garner's express authority at the time of bid opening to execute the bid and the other documentary evidence of the manager's authority drafted after bid opening may not be considered in deciding the bid's acceptability. Jordan states that evidence of authority may be furnished after bid opening, but that to be considered, the evidence must have existed before bid opening.

We have indicated that the absence of evidence existing before bid opening may make it difficult for the bidder "to establish to the contracting officer's satisfaction that the individual signing the bid was authorized to do so at the time of bid opening," 49 Comp. Gen. 527 (1970), and that a bid signed by an agent should be rejected where proof of agency is not submitted at any time. New Jersey Manufacturing Company, Incorporated, B-179589, January 23, 1974, 74-1 CPD 25. In addition, we encourage the submission of proof before or at bid opening to avoid challenges and problems of proof, New Jersey Manufacturing Company, Incorporated, supra, but the question of authority is essentially a factual determination which should be made upon consideration of all relevant evidence.

In this connection, before bid opening M. W. Garner executed and filed with Eglin Air Force Base, Florida, and Fort McPherson, Georgia, Standard Form 129s appointing N. David Garner an agent to sign bids. Jordan asserts that those delegations are inapplicable to Tyndall Air Force Base. On this point, Appendix F of Armed Services Procurement Regulation (§ F.100.129) (1975 ed.) provides the following information applicable to Standard Form 129:

"Persons or concerns wishing to be added to a particular agency's bidder's mailing list for supplies or services shall file this properly completed and certified Bidders Mailing List Application * * * with each procurement office of the Federal agency with which they desire to do business. * * * The application shall be submitted and signed by the principal as distinguished from an agent, however constituted."

Separate filing of Standard Form 129s with different procurement offices is apparently called for so that the applicant may be added to the mailing list of each recipient procurement office. We see nothing in Standard Form 129 or the applicable regulations which would limit the appointment of agents to the procurement office to which the form was submitted. In this regard, in New Jersey Manufacturing Company, Incorporated, supra, we did not question the propriety of the procuring office's inquiring from others whether they had evidence to establish an individual's authority to submit bids.


We think the delegations made by Garner before bid opening, together with the other evidence prepared after bid opening, constitute proof of the authority of N. David Garner to submit a valid offer. Therefore, with regard to the question raised by Jordan, the obligation of the surety on the bid bond is enforceable.

Finally, Garner's bid is responsive even though it failed to include the Standard Form 19-B continuation sheets since the information called for relates to the bidder's responsibility, not to the bid's responsiveness. Therefore, the omission may be waived as a minor informality and the information in the form may be submitted after bid opening. M. M. Sundt Construction Company, B-184212, November 6, 1975, 75-2 CPD 283.

In view of our conclusion, there is no need to consider Griffin's concern whether Jordan's bid is responsive.

The protest is denied.

Deputy


Comptroller General
of the United States